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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/672,821
Filing Date: September 29, 2000
Appellant(s): LYNCH ET AL.

MAILED

JUL 27 2007

Technology Center 2100

Steven N. Terranova
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/13/2007 appealing from the Office action mailed 10/18/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,205,557	Chong et al.	3-2001
5,812,748	Ohran et al.	9-1998
6,724,747	Arango et al.	4-2004
5,430,709	Galloway	7-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1, 6, 7-11, 12-15, 17-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chong et al (U.S. Patent Number 6,205,557) hereinafter referred to as Chong in view of Galloway (U.S. Patent Number 5,430,709) and further in view of Ohran et al. (U.S. Patent Number 5,812,748) hereinafter Ohran.

As per claims 1, 12, 13, 15 and 22, Chong disclosed a communication network including an active and standby call servers, the standby server becoming active upon failure of the active call server (See ABSTRACT) where the active server receiving signal from an interface server hereinafter referred to as a "*media gateway*". The active call server *sending/receiving a request, to/from a media gateway, for information regarding said active media connection; and receiving said information.* ("The active call server may then send a request back to the *media gateway* requesting more information regarding the call and receiving the information..."). See Column 1, Lines 36-62, and Column 2, Line 25 through Column 3, Line 17 and Figure 5.

Chong substantially disclosed the invention as claimed. However, Chong was silent about the information been an active media connection information. However, since the teaching of Chong is dealing with call information, the information is obviously information about an active voice communication between entities. Nevertheless, in analogues art, as evidenced by the teachings

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of Galloway, monitoring ongoing/established active media connection and maintaining a call record of the active connections of calls between communication terminals, the information about the active media connection comprising plurality of detailed attributes specifying detailed call information of the caller and the callee associated with the ongoing or active media connection was known in the art at the time the invention was made. See Abstract, Figs. 4-5 (Galloway further disclosed identification of device originating an active media connection, duration of the active media connection, coding of the active connection and quality of service associated with the active media connection as in claims 8-11, 17-20) Column 1 Line 58 through Column 2 Line 37 and Column 2 Line 60 through Column 3 Line 56.

Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Galloway related to monitoring and recording active media connections and have modified the teachings of Chong related to a communication system having therein an active and backup call servers monitoring call establishment information at a call setup stage in order to maintain a detailed record of active media connections related to the statistics of the active call information in both directions. See Column 1 Line 66 through Column 2 Line 1 and Column 9 Lines 15-42.

The already combined teachings of Galloway and Chong substantially disclosed the invention as claimed. However, failed to teach that the request originating from a backup call server to receive the information about the active media connection and receiving the information at the backup call server. However, as evidenced by the teachings of Ohran, a backup server initiating a request to receive information (mirroring) about call information and receiving the information at the backup server when an active server fail in recovering information in a fault-tolerant computer system known in the art at the time the invention was made (Ohran, Title, Abstract, Column 4,

Lines 29-46, Column 15, Lines 19-24 and Column 24, Lines 37-43). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Ohran related to the direction of initiating a request been from the backup server and have modified the already combined teachings of Galloway and Chong in order to eliminate the need for time consuming copying of information from primary to secondary/backup server and vice versa in keeping the record synchronized (Ohran, Column 3, Lines 43-48).

As per claims 6 and 7, Chong disclosed an active call server storing the received information about active media connection in a *memory*. See Column 3, Lines 26-33.

As per claim 14, Chong disclosed a telecommunication network including an active and standby call servers, the standby server becoming active upon failure of the active call server. Chong disclosed *receiving an indication of a failure of a primary call server, said primary call server, prior to said failure, supporting said active media connection; responsive to said receiving, sending a request, to a media gateway, for information regarding said active media connection; and receiving said information*. See ABSTRACT, Column 1, Lines 54-62, Column 4, Lines 28-36 and Column 5, Lines 6-32.

Chong substantially disclosed the invention as claimed. However, Chong failed to teach the information been an active connection information. However, as evidenced by the teachings of Galloway, monitoring ongoing/established active media connection and maintaining a call record of the active connections of calls between communication terminals, the information about the active media connection comprising plurality of detailed attributes specifying detailed call information of the caller and the callee associated with the ongoing or active media connection. See Abstract, Figs. 4-5 (Galloway further disclosed identification of device originating a active media connection, duration of the active media connection, coding of the active connection and quality of service

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associated with the active media connection as in claims 8-11, 17-20) Column 1 Line 58 through Column 2 Line 37 and Column 2 Line 60 through Column 3 Line 56.

Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Galloway related to monitoring and recording active media connections and have modified the teachings of Chong related to a communication system having therein an active and backup call servers monitoring call establishment call information at a call setup stage in order to maintain a detailed record of active media connections related to the statistics of the active call information in both directions. See Column 1 Line 66 through Column 2 Line 1 and Column 9 Lines 15-42.

However, the already combined teachings of Gallows and Chong failed to teach that the request originating from a backup call server to receive the information about the active media connection and receiving the information at the backup call server. However, as evidenced by the teachings of Ohran, a backup server initiating a request to receive information (mirroring) about call information and receiving the information at the backup server when an active server fail in recovering information in a fault-tolerant computer system known in the art at the time the invention was made (Ohran, Title, Column 4, Lines 29-46, Column 15, Lines 19-24 and Column 24, Lines 37-43). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Ohran related to the direction of initiating a request been from the backup server and have modified the already combined teachings of Galloway and Chong in order to eliminate the need for time consuming copying of information from primary to secondary/backup server and vice versa in keeping the record synchronized (Ohran, Column 3, Lines 43-48).

3. Claims 2-5, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chong et al (U.S. Patent Number 6,205,557) in view of Galloway (U.S. Patent Number 5,430,709) in view of Ohran et al. (U.S. Patent Number 5,812,748) and further in view of what would have been obvious to one of ordinary skill in the art at the time the invention was made.

With respect to the claim rejection applied to claims 1 and 15 above, the combined teachings of Chong, Galloway and Ohran disclosed the invention as claimed. However, the already combined teachings of Chong and Galloway is silent about the specific protocol used from a possible communication protocols such as SNMP (Simple Network Management Protocol), MGCP, SIP (Session Initiation Protocol) which are used to acquire information between the active and or the backup call servers and interfacing servers (media gateways).

However, the protocols mentioned above were well known in the art at the time the invention was made. In fact SNMP (Simple Network Management Protocol) *is used to read and write (set) information on network devices, which is a standard for gathering statistical data about network traffic and the behavior of network components; SNMP uses management information bases (MIBs), which define what information is available from any manageable network device.* MGCP (Media Gateway Control Protocol) *is a protocol for IP telephony that enables a caller with a PSTN phone number to locate the destination device and establish a session also known as IETF RFC 2705* and further SIP (Session initiation protocol) *is an Internet standard specified by the Internet Engineering Task Force (IETF) in RFC 2543. SIP is used to initiate, manage, and terminate interactive sessions between one or more users on the Internet. SIP, which borrows heavily from HTTP and the e-mail protocol SMTP, provides scalability, extensibility, flexibility, and capabilities for creation of new services. SIP is increasingly used for Internet telephony signaling, in gateways, PC phones, softswitches, and softphones.* For example See (U.S. Patent Number 6,584,186) issued to Aravamudan et al disclosed the use of the claimed protocols (See Column 1, Line 55 through Column 2, Line 5 and Column 13, Lines 50-57).

The use of the protocols disclosed above was commonly known and used in the art of VOIP, which is an arbitrary choice of an ordinary skill in the art when developing or establishing a communication session in a voice communication network. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to take those commonly and widely implemented protocols related to obtaining or transmitting information between network devices and have modified the already combined teachings of Chong, Galloway and Ohran in order to facilitate the transmission of information between devices in a telephony network.

4. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arango et al (U.S. Patent Number 6,724,747) hereinafter referred to as Arango in view Ohran et al. (U.S. Patent Number 5,812,748).

Arango disclosed a method and system for media connectivity over a *packet-based network, a telephone station apparatus a media gateway communicatively connected to a telephone station apparatus and a data network and connected to media gateway controller or connection manager* for establishing a connection between first media gateway and a second media gateway. See Figures 1-5, Column 1, Lines 45-60 and Column 2, Lines 5-24. Since a media gateway is a computer device or a computer program run on a computer device that translates between two dissimilar protocols, a media gateway comprising a receiver to receive data from first network and to process the received data using a processor connected to the receiver and to transmit the processed data to a second network through a transmitter connected to a processor is inherently disclosed by Arango's described media gateway.

Arango substantially disclosed the invention as claimed. However, failed to teach that the request originating from a backup call server to receive the information about the active media connection and receiving the information at the backup call server. However, as evidenced by the

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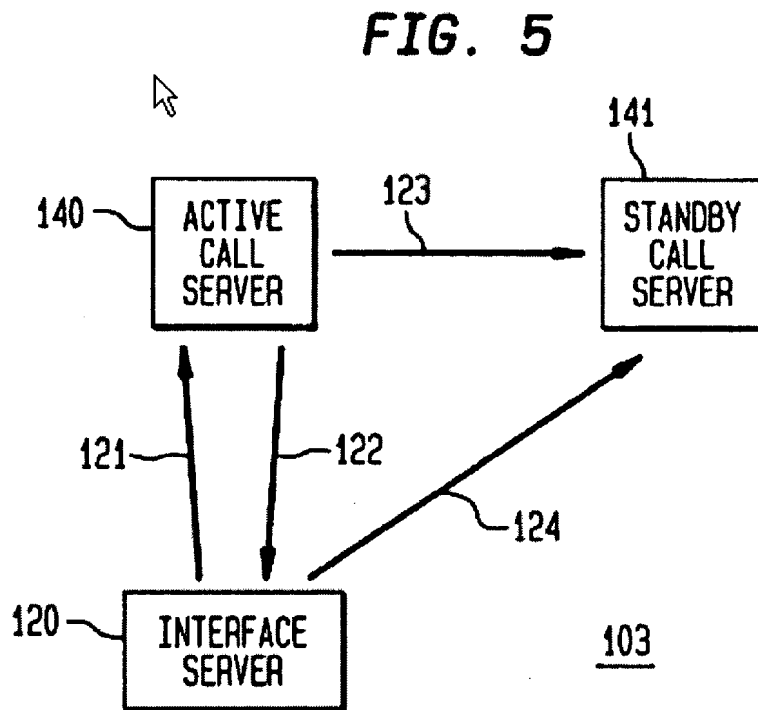
teachings of Ohran, a backup server initiating a request to receive information (mirroring) about call information and receiving the information at the backup server when an active server fail in recovering information in a fault-tolerant computer system known in the art at the time the invention was made (Ohran, Title, Column 4, Lines 29-46, Column 15, Lines 19-24 and Column 24, Lines 37-43). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Ohran related to the direction of initiating a request been from the backup server and have modified the already combined teachings of Arango in order to eliminate the need for time consuming copying of information from primary to secondary/backup server and vice versa in keeping the record synchronized (Ohran, Column 3, Lines 43-48).

(10) Response to Argument

Argument: The Appellants argues, “that none of the references, either alone or in combination, discloses or suggests a backup call server which sends a request to a media gateway for information regarding an active media connection” and further argues that the combined teachings failed to teach “a media gateway” See Brief, Page 10, ¶2, substantially the same argument is recited on Page 11, Lines 3-4, Lines 20-26. Substantially the same argument is recited against the combined teachings of Arango and Ohran (see Brief, Page 16, Lines 6-8).

Answer: The examiner respectfully disagrees with such allegations. The already combined teachings of Chong Galloway and Ohran disclosed an active (# 140) and a warm standby (#141) call servers receiving information regarding an active media connection and

performed a monitoring function; and further transmitted completed inactive (non active media connection information) information to a “completed call archive”. As it is clearly shown for example in Fig. 5 of Chong (also disclosed below) the teachings of Chong shows interaction with the interface server (“media gateway”) transmitting a request indicating an action and based on the action to direct the “media gateway” to redirect information of the call to the alternative warm standby call server.



It is apparent that the receiving information of active media connection information does involve some type of initial request (as it can not be randomly and/or accidentally happen) in order to receive and monitor an active media connection. In this case the active call server # 140 is sending a request telling the interface server (MG), to switch over to the standby call server as recited above in Fig. 5, Abstract, Column 1, Lines 36-62, and Column 2, Line 25 through Column 3, Line 17) and (See Galloway, Abstract, Figs. 4-5, Column 1

Line 58 through Column 2 Line 37 and Column 2 Line 60 through Column 3 Line 56)]. That been said, both Chong and Galloway did not teach the request originating from a backup call server, however as recited above in the rejection of the claims, Ohran disclosed a backup server initiating a request to receive information (mirroring) about call information and receiving the information at the backup server when an active server fail in recovering information in a fault-tolerant computer system (see Ohran, Title, Abstract, Column 4, Lines 29-46, Column 15, Lines 19-24 and Column 24, Lines 37-43). Thus, the combined teachings of Chong Galloway and Ohran meet the claimed limitation as recited in the claims.

For clarification purposes, the examiner likes to address the general field and objective of the claimed invention and the prior art of record in general. In a telephony communication system, it is a commonly known that call records are always maintained for several purposes and mainly for billing purposes. In doing so, telecommunication companies developed systems for maintaining a complete record of calls by implementing a fault tolerant system involving a primary call server and a warm standby secondary (backup) call server. Generally, the idea is that when the primary fails, the secondary server takes over, thus avoiding lose of call record. Having that said, there are several methods/systems in how this switchover or failover is implemented. The claimed invention is best understood (by the examiner), as being directed to maintaining call records. Now, as it is clearly understood, there are different types of telephony communication networks such as a Circuit Switched Telephone Network (CSTN) and a packet based telephony (Internet based Telephony Network or known as VOIP). Having that said, it should be clear that any of this readily available communication networks is used in voice communication as a

communication medium. The type of communication network utilized has minimal effect on the model of the claimed invention and the applied prior art of record.

Argument: Appellants argue, "*Ohran* does not disclose a backup call server. In fact, *Ohran* does not disclose a call server of any type... nowhere does *Ohran* disclose or suggest that the backup computer sends a request to a media gateway for information regarding an active media connection " See Brief, Page 11, Lines 8-14.

Answer: Appellants appear to attack references individually in a rejection of combined teachings of Chong Galloway and Ohran. Cannot show non-obviousness by attacking references individually where, as here the rejections are based on combination of references. In re Keller, 208 USPQ 871 (CCPA 1981). As it is clearly pointed out in the body of the claim rejection and response to the previous argument (a), the limitation argued are taught by the combined teachings of Chong Galloway and Ohran. Furthermore, as already pointed out Chong taught active call server, standby/backup call server and a interface server (media gateway) as recited in Fig. 5 above. On the other hand Ohran taught a backup server initiating a request to receive information (mirroring) about call information and receiving the information at the backup server when an active server fail in recovering information in a fault-tolerant computer system (see Ohran, Title, Abstract, Column 4, Lines 29-46, Column 15, Lines 19-24 and Column 24, Lines 37-43). Thus, the argument recited above by attacking the reference individually is illogical.

Argument: Appellants argue "that none of the references, either alone or in combination, discloses or suggests that information received at a backup server includes an

indication of the Quality of Service setting associated with an active media connection” See Brief, Page 12, Lines 1-4.

Answer: In the combined teachings, Galloway disclosed active call information, the information comprising identification of device originating an active media connection (caller ID), duration of the active media connection (Talk time), coding of the active connection and quality of service associated with the active media connection. See Galloway Column 1 Line 58 through Column 2 Line 37 and Column 2 Line 60 through Column 3 Line 56.

Argument: The Appellants further recite, “ ...there is no motivation to combine Chong, Galloway, and Ohran” (see Brief, Page 13, Line 3), and “that there is no motivation to combine Arango with Ohran” (see Brief, Page, 16, Line 11) and that the combined references (Arango and Ohran) cannot be properly combined because each are non-analogous art (see Brief, Page 16. Lines 13-18).

Answer: The examiner disagrees with that contention. In response to applicant's argument that Ohran is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, one can clearly see that Ohran is dealing with failover in a fault-tolerant computer system. Ohran disclosed a backup server initiating a request to receive information (mirroring) about call information and receiving the information at the backup server when an active server fail in recovering information in a

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fault-tolerant computer system (see, Ohran, Title, Column 4, Lines 29-46, Column 15, Lines 19-24 and Column 24, Lines 37-43). Assuming *arguendo* that the applicant is correct that Ohran is not specifically in the exact field of endeavor (maintaining a record of an active media connection in a packet based telephony network), it is still examiner's position that the teaching of Ohran is applied at least for the reason that it maintains record of information by recovering server failure (primary server) via a backup computer system eliminating the need for time consuming copying of information from primary to secondary/backup server and vice versa in keeping the record synchronized [Ohran, Abstract, Column 3, Lines 43-48]. Note that the type of record recovered may vary, but the act of recovering remains analogous. Thus, Ohran is believed to be analogous, at least for the reasons set forth above. In response to applicant's argument that there is no motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combined teachings are analogous in a sense that both Chong and Ohran are dealing with fault-tolerant system dealing with failover/switchover between a primary and a backup server. That been said, an ordinary skill in the art recognizes that both references main goal is maintaining a complete record of information in a communication network. Nevertheless, the references are combined for the motivations recited in the body of the rejection (see claim rejections).

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Note: In the last final office action mailed on 10/18/2006, in an attempt to expedite prosecutions of this instant application, the examiner offered the following remarks:

...Applicant is strongly encouraged to further incorporate into the independent claims some details or features (if any) of the instant application to make a reasonably patentable variation over the applied prior art of record. It is examiner's position that inventive entity should amend the claims to cover a complete picture of the intended invention beyond the indistinguishable language (sending a request...and receiving a response...) as recited in the claims. The inventive entity should consider limitations directed to what actually triggers the initiation of a request by the backup server, limitations directed to the model of the switchover, limitations directed to the role of the active/primary call server in relation with the backup server, and limitations directed to the interconnectivity between the active and backup servers (if any). Examiner likes to remind applicant to point where in the specification such enabling written support may be found corresponding to any future potential amendment.

Appellants had several opportunities to amend the claimed subject matter, and have failed to modify the claim language to distinguish over the prior art of record by clarifying or substantially narrowing the claim language. Thus, Applicant apparently intends that a broad interpretation be given to the claims and the Examiner has adopted such rejections. See *In re Prater and Wei*, 162 USPQ 541 (CCPA 1969), and MPEP 2111. As the claims breadth allows multiple interpretations and meanings, which are perhaps broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly as reasonably possible in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993). It is the Examiner's position that the detailed functionality that allows for Applicant's invention to overcome the prior art applied in the rejection, fails to differentiate in detail how these features are unique. Thus, the rejection should be sustained for the reasons disclosed above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

YMG

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